COMMANDERS DIGEST

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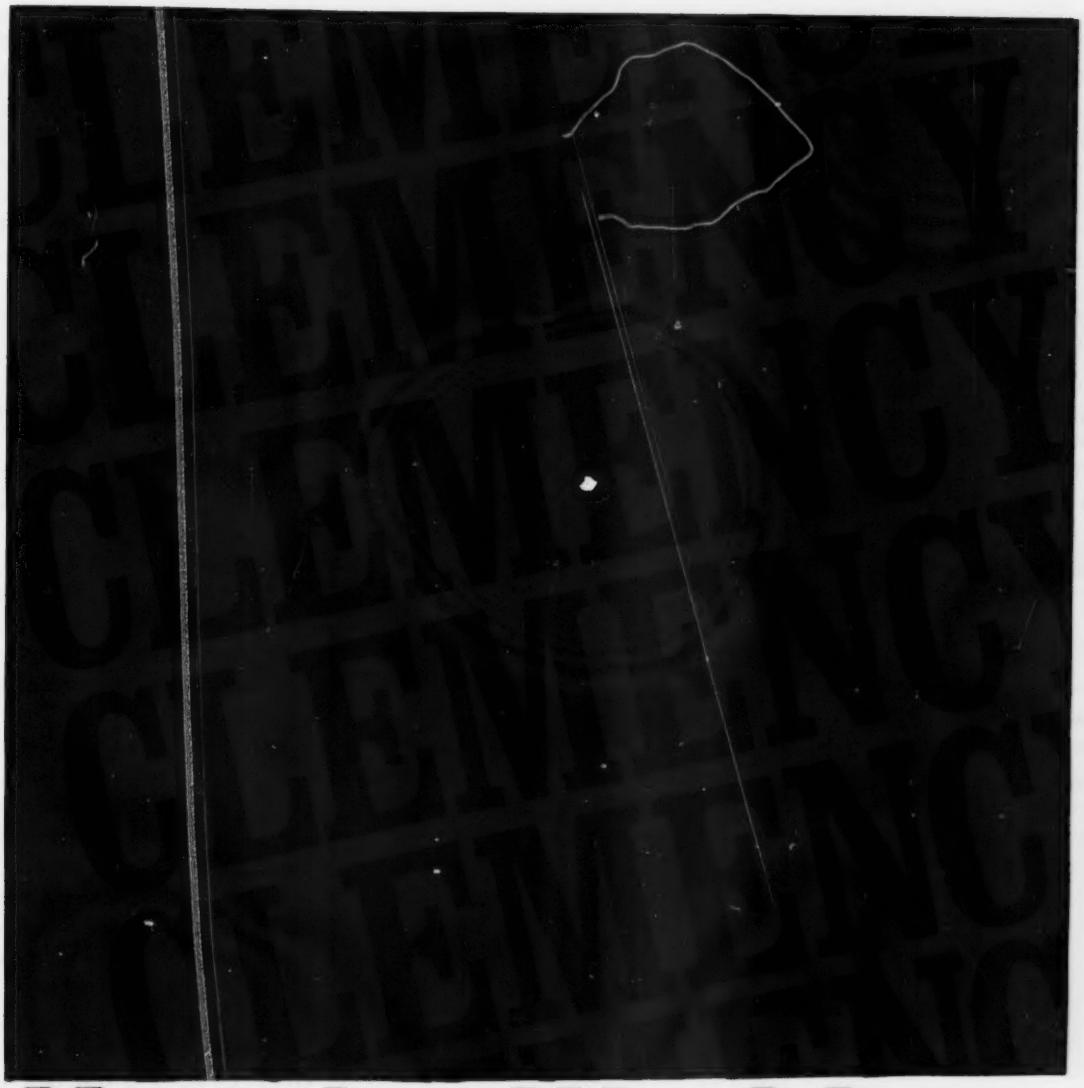

How it's Working

About 7,000 letters of eligibility notification have been sent to absentees' next of kin which resulted in hundreds of telephone inquiries. Sixty-eight individuals returned to the military authority with the letter in hand.

The President's clemency program is outlined in Presidential Proclamation 4313 and Executive Orders 11803 and 11804, dated September 16, 1974. The implementing responsibility of the Department of Defense relates to those individuals who are subject to military jurisdiction—that is, members of the Military Services who have been dropped from the rolls as deserters by reason of an unauthorized absence of more than 30 days between the dates of August 4, 1964 and March 28, 1973. It is estimated that 12,500 eligible absentees were at large. Also eligible were approximately 500 individuals who were in military custody at the time of the proclamation, but who for various reasons had not been separated from the military service or brought to trial for their offenses.

On September 17, 1974, the Department of Defense provided extensive guidelines to the Military Departments on implementation of the program.

The controlling philosophy was that the program should provide an effective, expeditious procedure, fully protective of the rights and options of the returnee, whereby eligible military absentees may enter the program, become separated from the military service and undertake alternate service. Upon completion of the prescribed period of service, a *clemency discharge* would be issued in lieu of the *undesirable discharge* previously received upon separation from the military.

The specific requirements for eligibility are set forth in the presidential proclamation. They are as follows:

- The unauthorized absence is a violation of Article 85, 86 or 87 during the period August 4, 1964 through March 28, 1973.
- Other pending offenses, if any, have been disposed of.
- The member must report not later than January 31, 1975.
- The member affirms his allegiance and pledges to perform the specified period of alternate service.

Certain aspects of the specific guidance issued by the Department of Defense should be highlighted:

The deserter must return to military control—just as the draft evader must present himself to the U.S. Attorney.

How DoD Efforts Make the Clemency Program Work

By Martin R. Hoffmann; General Counsel of the Department of Defense

Eligibility may be determined by telephone or letter to the clemency information point. The information disclosed in these inquiries will not be used to apprehend the member for a desertion-related offense during the eligibility period.

Absentees coming into the country will not be apprehended at the border and will be given 15 days to report to military authority.

All participants will be centrally processed by the respective military Service at Fort Benjamin Harrison, Indiana.

Participation in the clemency program further rests on agreement by the individual to the following:

- A request for discharge for the good of the service must be submitted.
- The unauthorized absence would render him triable and could lead to a punitive discharge.
- Issuance of formal legal charges is not required.
- The individual electing to participate in the program must reaffirm his allegiance and execute a pledge to complete alternate service.

After entering the country absentees have 15 days before they must report to military authority.

During the initial stages of processing, each individual is given a complete legal briefing by a military attorney assigned to represent him. This involves a group session, with opportunity for individual sessions at that time or any time during processing. The consequences of an *undesirable discharge* are fully explained to him, as well as the legal implications of all aspects of the program. Additionally, each member is advised that he is entitled to consult a civilian attorney of his choice. He may have his own counsel if he has retained one. The local bar association in Indianapolis, at DoD request, has provided a referral service of attorneys who provide advice, free of charge, to any returning absentee. Office space at Fort Benjamin Harrison has been provided for private consultation between attorney and client.

After the individual has established his legal representation and has been fully advised, the processing continues. His pay accounts are placed in order and he is given an opportunity to provide information to the Joint Alternate Service Board at Fort Benjamin Harrison for its consideration in determining the amount of alternate service he will be required to perform. He is also given a complete physical examination. As the proclamation requires, each case is reviewed for the assignment of alternate service—24 months is the standard. The Board considers reductions on an individual basis in the length of alternate service from the maximum of 24 months, taking into account the following circumstances:

- Previous satisfactory military service
- Combat service
- Awards and decorations
- Wounds and injuries
- Nature of employment while absent

Private consultations between attorneys and clients are available in office space provided at Ft. Benjamin Harrison, Indiana.

The composition and procedures of the Joint Alternate Service Board may be of interest to you. The Board was established jointly by the Secretaries of the Military Departments at the beginning of the program. All military absentees under the jurisdiction of the Military Departments have had their alternate service determinations made by the Joint Alternate Service Board. The Board is composed of one O-6 grade officer—Colonel or Captain of the Navy—from each of the military Services—Army, Navy, Air Force, Marine Corps. All four officers consider the case of each returning absentee. The officer from the military Service of the absentee presides during the consideration of his case. In the case of a tie vote, that officer's determination is controlling.

As noted earlier, the individual has the opportunity to present a written statement to the Board. The Board will not consider his case until it

After counseling, processing continues. Pay accounts are put in order and physical exams are completed. Meanwhile, the Joint Alternate Service Board reviews each case. The alternate service assignments are a standard 24 months but may be reduced on a case-by-case basis.

determines that the individual either has taken advantage of the opportunity, or has specifically declined to do so. In the preparation of this statement the individual has complete access to his counsel.

Upon being advised as to the length of alternate service, the individual is given a further opportunity to consult with his attorney or attorneys. He must then make his final determination as to whether or not he wishes to participate in the program.

In the great majority of cases processed through the Joint Processing Center, action is completed within a 24 hour period.

The individual is advised that after discharge he must report to the Director of the Selective Service System in the state in which he intends to reside. The Selective Service System thereafter works with him to provide a suitable alternate service job.

The details of the Alternate Service Program are to be addressed by the Director of the Selective Service System. One point bears mention, however. The Selective

Service System notifies the individual's military Service when he has satisfactorily completed his alternate service. When this notification is received, the military Service will issue the individual a *clemency discharge* in lieu of the *undesirable discharge*.

A statistical summary of our implementation of the program reflects that as of December 16, 1974, we have received over 6,000 inquiries from all sources about the program. Also included are the numbers of cases completed and those still being processed. Also reported is a breakout of the disposition of cases in terms of the period of alternate service prescribed.

Let me deal, briefly, with certain aspects of the program that have been of particular interest.

The first is the nature of the *clemency discharge*. Military discharges are designed to describe the quality of an individual's military service. An *honorable discharge* is issued in recognition of honorable and faithful service during a committed period of military service. The *general discharge* is given for satisfactory military service, and the *undesirable discharge* is given for unsatisfactory service. The *bad conduct discharge* and the *dishonorable discharge* are punitive discharges, issued only by reason of an approved sentence of a special or general court-martial.

The usual eligible absentee is given an *undesirable discharge*. The Department of Defense guidelines, and those promulgated by each of the Military Departments, provide that an absentee must be fully counseled of the adverse nature of the undesirable discharge. He is informed that it is a military discharge under conditions other than honorable—and that generally he will not be eligible for veterans' benefits.

The *clemency discharge* is designed to be issued once a dischargee has satisfactorily performed his period of alternate service. It is, in effect, a testimonial to the fact that the individual has satisfied the obligation undertaken pursuant to the President's program. It is not intended, in any way, to effect a change in the characterization of the individual's military service as unsatisfactory, or to effect a recharacterization of an other-than-honorable-conditions military discharge. It is

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DoD CLEMENCY PROCESSING

STATISTICAL SUMMARY

	USA	USN	USAF	USMC	DoD TOTAL
INQUIRIES	6121	129	26	837	7113
IN PROCESSING	38	1	—	6	45
COMPLETED PROCESSING	2128	68	15	416	2627

intended, however, to indicate as public testimonial that the individual has accepted the offer of clemency, and complied with the undertakings pursuant to the President's program. For this he deserves recognition—which the President has sought to symbolize through the issuance of the clemency discharge.

With respect to Veterans Administration benefits, the fact that an individual serves his alternate service and is thereafter awarded a *clemency discharge* in lieu of an *undesirable discharge* is not intended to affect his entitlement to Veterans Administration benefits one way or another.

The second aspect of the program which deserves individual comment is the extent to which the Department has endeavored to protect the rights of every individual processed under the program.

The Department of Defense has insisted that every individual being processed should have full and complete legal advice available. Moreover, no information received from an individual inquiring as to his eligibility or during his processing will be used against him for prosecutive purposes. If there are legal defenses available to him which would indicate that he could not be successfully prosecuted for his unauthorized absence offense, it is the responsibility of his counsel—civilian or military—to make these facts known to the absentee himself or to the military discharge authority.

The decision to request a discharge under this program—or to elect to have his case processed under the normal military procedure—is a matter solely up to the individual himself and his counsel.

Finally, in an effort to ensure that all eligible military absentees receive notification of their eligibility if at all possible, the Military Departments recently sent letters to the next of kin of those eligible absentees who had not already contacted us. DoD sent about 7,000 of these letters. Over 2,200 of these have been returned as undeliverable, but we have had 375 telephone inquiries in response to these letters and about 68 individuals have returned to their military Service with the letter in their possession.

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